

**2001 DRAFTING REQUEST****Senate Amendment (SA-SB212)**Received: **09/19/2001**Received By: **rkite**Wanted: **As time permits**

Identical to LRB:

For: **Jon Erpenbach (608) 266-6670**By/Representing: **Julie**This file may be shown to any legislator: **NO**Drafter: **rkite**

May Contact:

Addl. Drafters:

Subject: **Trade Regulation - electron com**Extra Copies: **MGG**Submit via email: **YES**Requester's email: **Sen.Erpenbach@legis.state.wi.us**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Allowing internet service providers to implement a more restrictive policy on the sending of unauthorized e-mail

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**Instructions:**

See Attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rkite 09/20/2001	wjackson 09/20/2001	rschluet 09/20/2001	_____	lrb_docadmin 09/20/2001	lrb_docadmin 09/20/2001	
/2	rkite 09/21/2001	wjackson 09/21/2001	jfrantze 09/24/2001	_____	lrb_docadmin 09/24/2001	lrb_docadmin 09/24/2001	

09/24/2001 02:56:19 PM

Page 2

FE Sent For:

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09/20/2001 09:52:20 AM

Page 1

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/1	rkite 09/20/2001	wjackson 09/20/2001	rschluet 09/20/2001		lrb_docadmin 09/20/2001	lrb_docadmin 09/20/2001	

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12 WLJ 9/21  
 69/24  
 Self 9/24  
 <END>

09/20/2001 09:51:26 AM

Page 1

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Via e-mail

09/20/2001 09:19:48 AM

Page 1

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/?	rkite	1 WLJ 9/20					
			9-20-01				

FE Sent For:

&lt;END&gt;

[Click here and type address]

# facsimile transmittal

To: Robin Kite

Fax: 264-6948

From: Julie – Sen Erpenbach Office

Date: 09/19/01

Re: SB 212 amendment

Pages: 2

CC:

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

☐ Please Recycle

Note: Call if questions – Thank you

CONFIDENTIAL

Quarles & Brady  
Tom Fonfara

283-2623

Senate Bill 212

1. Add a Section in 134.74 to read:

"Nothing in this statute shall be construed to prevent or limit, in any way, a provider of Internet access service from adopting a policy regarding commercial or other electronic mail, including a policy of declining to transmit certain types of electronic mail messages, and from enforcing such policy through technical means, through contract, or pursuant to any remedy available under any other provision of law"

MORE RESTRICTIVE

• ISPs all use and have the ability to enforce an Acceptable Use Policy (AUP) that contractually limits certain uses of the network, including spam. We are at the front lines of the spam battle, and we use these contractual terms to give ourselves the flexibility to quickly terminate the accounts of spammers. There is always danger in anti-spam legislation if they can be read to provide the EXCLUSIVE legal remedy for blocking spam. In other words, you don't want to create a "safe harbor" because someone interprets that statute to read "as long as you do the following things (keep the spam to one page, send after 9 PM, etc.), your email is not spam and ISPs are required to carry it." If that happens, spammers will undoubtedly find loopholes and we will be limited in our ability to shut them down, which could lead to the opposite result than what the bill intends (i.e. more spam, not less). The statute should be explicit that it doesn't preempt our ability to enforce our AUP. We hope the committee would be receptive to not hindering our ability to continue our vigorous fight against spam. (See WorldCom AUP <http://www.uu.net/us/support/usepolicy/>)

2. Add language in Section 134.74 (3) after the word "solicitor" (P. 2, line 14) as follows:

"as least 30 days in advance,"

• This change reflects that it takes some time for us to note the change on the customer's record and to remove the person's name from any lead lists that may have been created for upcoming email distribution.



D-Note

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION  
SENATE AMENDMENT ,  
TO 2001 SENATE BILL 212

- 1 At the locations indicated, amend the bill as follows:
- 2 ✓ 1. Page 2, line 19: after "users." insert "Nothing in this section shall be
- 3 construed to prohibit a provider of Internet access service from adopting and
- 4 implementing a policy, or entering into and enforcing a contract, under which the
- 5 provider may decline to transmit any electronic mail solicitation that violates that
- 6 policy or contract."
- 7 ✓ 2. Page 2, line 14: after "mail" insert ", at least 30 days before the solicitor
- 8 makes the solicitation,".

9 (END)



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0672/11dn  
P11dn

RNK:1:.....  
Wlj

This draft provides that the prohibitions under Senate Bill 212 are not intended to limit the authority of the provider of Internet access service to decline to transmit certain electronic mail solicitations. The draft does not contain a definition of "Internet access service". Because that term could be broadly construed, you may wish to consider defining the term to better specify the scope of that authority.

If you have any questions concerning this draft, please feel free to contact me.

Robin N. Kite  
Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa0672/1dn  
RNK:wlj:rs

September 20, 2001

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Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.state.wi.us

9-21-01

Per Dan Schmitt - leg. council

committee voted to add "more restrictive"  
before "policy" and "contract" on line 6

wants redraft to contain these changes

will send back stripes



State of Wisconsin  
2001 - 2002 LEGISLATURE

RmR  
12  
LRBa0672  
RNK:wl:rs  
wlj

SENATE AMENDMENT ,  
TO 2001 SENATE BILL 212

1 At the locations indicated, amend the bill as follows:

2 1. Page 2, line 14: after "mail" insert ", at least 30 days before the solicitor  
3 makes the solicitation."

4 2. Page 2, line 19: after "users." insert "Nothing in this section shall be  
5 construed to prohibit a provider of Internet access service from adopting and  
6 implementing a policy, or entering into and enforcing a contract, under which the  
7 provider may decline to transmit any electronic mail solicitation that violates that  
8 policy or contract."

9 (END)